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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,468	01/03/2002	Christoph Hehrlein	2869	8101
26822	7590	06/06/2005	EXAMINER	
WALTER A. HACKLER 2372 S.E. BRISTOL, SUITE B NEWPORT BEACH, CA 92660-0755			THOMPSON, MICHAEL M	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

512

Office Action Summary	Application No. 10/038,468	Applicant(s) HEHRLEIN ET AL.	
	Examiner Michael M. Thompson	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) 2,4-6,9-13,15,16 and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 7, 8, 14, 19-24, 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 19, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by White (4,366,169). White teaches a substrate and oxygen carrier wherein the carrier comprises fluorocarbon compositions, which are lipophilic of various polymeric compositions.

3. Claims 1, 3, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitbourne et al. (6,110,483). Whitbourne et al. teaches a substrate and oxygen carrier wherein the carrier comprises fluorocarbon compositions, which are lipophilic of various polymeric compositions. Please note the limitations only recite a fluorocarbon as an oxygen carrier.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

Art Unit: 3763

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 3, 7-8, 14, 19-24, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over White ('169) in view of Rowe (6,146,358). White teaches all of the limitations of the claims except for explicitly reciting a balloon substrate or polymer including pores having sizes in the range of 20-200 microns. It would have been obvious to one of ordinary skill in the art, at the time of invention, to have utilized the composition as taught by White with the composition delivery device of Rowe for the well known purpose of delivering a medical composition to a body surface as taught by White. Furthermore, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to include pores having sizes in the range of about 20 to 200 microns because the Applicant has not disclosed that pores of 20 to 200 microns provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with pores of 15 or 220 microns because the both pore measurements perform the same function of releasing a composition to a treatment site.

Response to Arguments

7. Applicant's arguments filed on March 28, 2005 have been fully considered but they are not persuasive. Applicant states that Examiner's withdrawal of claims 2, 4-6, 9-13, 15-16 and 25-27 are not proper. Examiner respectfully disagrees. The aforementioned claims are withdrawn by Examiner due to the fact that they read on a nonelected species.

8. Applicant states that White does not anticipate the claimed invention. Examiner respectfully disagrees. As is presented in the claims of the instant application, White does indeed anticipate all of the claimed limitations. Please see entire White reference for disclosure of Applicant's claimed invention.

9. Applicant states that Whitbourne does not anticipate the claimed invention. Examiner respectfully disagrees. As is presented in the claims of the instant application, Whitbourne does indeed anticipate all of the claimed limitations. Please see entire Whitbourne reference for disclosure of Applicant's claimed invention.

10. Applicant states that White in view of Rowe does not anticipate the claimed invention. Examiner respectfully disagrees. As is presented in the claims of the instant application, White does indeed anticipate all of the claimed limitations. Please see entire White reference for disclosure of Applicant's claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3763

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael M. Thompson whose telephone number is (571) 272-4968. The examiner can normally be reached on Monday-Fridays 9-5 (Flex-schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Thompson can be reached on (703) 272-4968. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
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Michael M. Thompson
Examiner
Art Unit 3763

